

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSE CARLOS LOPEZ,

Petitioner,

vs.

D. ADAMS, Warden,

Respondent.

Civil No. 11-0007 DMS (BLM)

**SUMMARY DISMISSAL OF  
SUCCESSIVE PETITION PURSUANT  
TO 28 U.S.C. § 2244(b)(3)(A)  
GATEKEEPER PROVISION**

Petitioner, Jose Carlos Lopez, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request for appointment of counsel. The Court does not rule on Petitioner's request for appointment of counsel because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

**PETITION BARRED BY GATEKEEPER PROVISION**

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his 1999 conviction in San Diego Superior Court case No. SF 133532. On December 21, 2001, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 01cv2350. In that petition, Petitioner challenged his conviction in San Diego Superior Court case No. SF 133532 as well. On March 12, 2003, this Court denied the petition on the merits. (See Order filed March 12, 2003 in case No. 01cv2350 IEG (LAB) [Doc. No. 18].) On March 11, 2009, the Ninth Circuit Court of Appeals denied Petitioner's request for

1 authorization to file a second or successive petition in the district court. (*See Order in Lopez v.*  
2 *Horel*, No. 08-75168 (9th Cir. Mar. 11, 2009).)

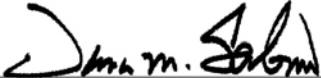
3 Petitioner is now seeking to challenge the same conviction he challenged in his prior  
4 federal habeas petition. Unless a petitioner shows he or she has obtained an Order from the  
5 appropriate court of appeals authorizing the district court to consider a successive petition, the  
6 petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). Here, the Ninth  
7 Circuit Court of Appeals has denied Petitioner leave to file a successive petition.

8 **CONCLUSION**

9 Because Petitioner has not obtained permission from the Ninth Circuit Court of Appeals  
10 to file a successive petition, this Court cannot consider his Petition. Accordingly, the Court  
11 **DISMISSES** this action without prejudice.

12 **IT IS SO ORDERED.**

13  
14 **DATED: January 11, 2011**

15   
16 **HON. DANA M. SABRAW**  
17 **United States District Judge**

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28